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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Communication No. 62/2013

Views adopted by the Committee at its sixty-third session (15 February-4 March 2016)

Submitted by:	N.Q. (not represented by counsel)
Alleged victim:	The author and her husband, S.A.
State party:	United Kingdom of Great Britain and Northern Ireland
Date of communication:	24 September 2013 (initial submission)
References:	Transmitted to the State party on 30 September 2013 (not issued in document form)
	Decision of admissibility of 2 March 2015 (CEDAW/C/60/D/62/2013)
Date of adoption of views:	25 February 2016

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Annex

Views of the Committee on the Elimination of Discrimination against Women under article 7 (3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-third session)

concerning

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Submitted by:	N.Q. (not represented by counsel)
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Date of communication:	24 September 2013 (initial submission)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 25 February 2016,

Adopts the following:

Views under article 7 (3) of the Optional Protocol

1.1 The author of the communication is N.Q., a Pakistani national born in 1984. She submits the communication on her behalf and on that of her husband, S.A., a Pakistani national born in 1986. When submitting the communication, on 24 September 2013, she claimed that the United Kingdom of Great Britain and Northern Ireland would violate their rights under the Convention on the Elimination of All Forms of Discrimination against Women by deporting them to Pakistan, where their lives would be at risk. The State party ratified the Convention and the Optional Protocol thereto on 7 April 1986 and 17 December 2004, respectively. The author is not represented by counsel.

1.2 When registering the communication on 30 September 2013, pursuant to article 5 (1) of the Optional Protocol and rule 63 of its rules of procedure, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party to refrain from expelling the author and her husband while the communication was under consideration. By a letter of 3 October 2013, the Permanent Representative of the United Kingdom explained that the registration letter had been received by the Permanent Mission in Geneva on 1 October, i.e. the date scheduled for the deportation of the author and her husband.

* The following members of the Committee took part in the consideration of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Bakhita Al-Dosari, Nicole Ameline, Magalys Arocha Dominguez, Barbara Bailey, Niklas Bruun, Louiza Chalal, Náela Gabr, Hilary Gbedemah, Yoko Hayashi, Ismat Jahan, Lia Nadaraia, Pramila Patten, Silvia Pimentel and Xiaoqiao Zou.

She also explained, among other things, that the State party had given full and urgent consideration to the Committee's request, but decided not to suspend the removal and, consequently, deported the author and her husband on 1 October.

1.3 The Committee declared the communication admissible on 2 March 2015, during its sixtieth session. The decision of admissibility, contained in document CEDAW/C/60/D/62/2013, is being made public together with the present views.

State party's observations on the merits

2.1 On 23 July 2015, the State party recalled the relevant procedural chronology regarding the present communication. In particular, on 24 September 2013, the author lodged the communication before the Committee, challenging the State party's decision to remove her and her husband to Pakistan. The removal took place on 1 October. In her initial communication, a one-page letter with attachments, the author did not refer to particular provisions of the Convention. She referred to the removal as "deportation"; however, according to the State party, "deportation" is a term that refers to the removal of a person from the United Kingdom where that removal is deemed to be conducive to the public good (usually because the person has committed an offence). In the present case, however, the author and her husband were removed because, as a matter of immigration law, the author's asylum application, which included her husband as a dependant, had failed.

2.2 By a note verbale of 27 January 2014, the State party invited the Committee to find the communication inadmissible pursuant to article 4 (2) (c) of the Optional Protocol because it was manifestly ill-founded and/or not sufficiently substantiated because the author had failed to provide any specific explanation as to why and how she considered that her rights under the Convention had been violated. In the alternative, the State party submitted that the communication should be declared inadmissible pursuant to article 4 (1) of the Optional Protocol because the author had failed to exhaust domestic remedies given that neither in her asylum claim nor in the legal proceedings thereafter had she expressly asserted that she would face gender-based discrimination if removed to Pakistan. In particular, the State party notes that, in the legal proceedings, in which the author was represented by counsel, she expressly abandoned any reliance on the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and, therefore, on article 14 (prohibition on discrimination).

2.3 The State party notes that, in her comments of 9 July 2014 on the State party's observations, the author expanded her complaint (as set out in the initial communication to the Committee, which concerned solely the State party's decision to remove the author and her husband from the United Kingdom). In her comments, she made additional assertions about the treatment allegedly suffered by her and her husband from 2 August 2013, when they first claimed asylum, to 1 October 2013, when they were removed. The author for the first time also identified the provisions of the Convention on which both her complaints were based. In her reply, she also referred, for the first time, to her cousin, "A.J.", who, she claimed, had married against her family's wishes and subsequently been killed, along with her husband, by the author's father and her uncle. On 5 September 2014, the State party reiterated its position that the communication was inadmissible. On 17 September 2014, the author sent the Committee an e-mail in which she stated that she and her husband had been attacked by her family and that her husband had been injured. On 15 October 2014,

the author lodged further submissions, stating, among other things, that there was no need, in the national proceedings, to separately rely on article 14 of the European Convention on Human Rights because the "substance of [her] claim based on honour killing and force[d] marriage was enough to raise the issue of discrimination". On 23 December 2014, the State party again maintained that the communication should be regarded as inadmissible.

2.4 On 25 March 2015, the parties were notified of the Committee's decision to retain the author's complaint about her removal as admissible and reject her complaint about her detention as inadmissible. In addition, the Committee found that the State party had breached its obligations under article 5 (1) of the Optional Protocol by deporting the author and her husband before the Committee had concluded its consideration of the communication. On the finding regarding article 5 (1), as a matter of principle, the State party does not consider that it is obliged to comply with requests for interim measures. Moreover, in the particular case, the authorities acted properly. Upon receiving the Committee's request for the application of interim measures, the State party gave "full and urgent consideration" to it.

2.5 The State party notes that the Committee has found that the author's removal complaint is admissible insofar as it raises issues under articles 1, 2 (c), (d) and (e), 3, 5 and 16 of the Convention. The State party notes that the Committee does not appear to have considered its submission that the complaint was inadmissible because the author failed to exhaust domestic remedies because she had not expressly raised the issue of gender discrimination in her asylum claim or the national legal proceedings, that she had placed no reliance on article 14 of the European Convention on Human Rights in her asylum claim and that in the national legal proceedings she had gone so far as to expressly abandon any reliance on the European Convention, including article 14 thereof. The State party therefore asserts that the decision of admissibility should be reviewed pursuant to rule 71 (2) of the Committee's rules of procedure, its submissions on non-exhaustion of domestic remedies should be expressly considered and the decision to declare the complaint admissible should be reversed.

2.6 The State party also notes the relevant national legal framework in relation to four aspects relevant to the case: asylum, humanitarian protection, discretionary leave and the European Convention on Human Rights. In the context of asylum, the State party notes that the author applied under the Refugee or Person in Need of International Protection (Qualification) Regulations (2006). Her application was rejected by the Secretary of State for the Home Department (Home Secretary) on 20 August 2013. Subsequently, her appeal before the First-tier Tribunal (Immigration and Asylum Chamber) was based on the rejection of her asylum claim. In the context of humanitarian protection, the State party notes that, in addition to considering her asylum claim, the Home Secretary also considered whether the author qualified for humanitarian protection in accordance with the Immigration Rules. In that connection, the State party reiterates that the author did not pursue her appeal against the refusal decision on that basis, i.e. she accepted the decision that she did not qualify for humanitarian protection. Moreover, when the author applied for asylum, she relied on the Human Rights Act (1998) and articles 2, 3 and 8 of the European Convention on Human Rights; however, she did not later pursue her appeal against the refusal decision before the First-tier Tribunal on that basis. Before the Tribunal, she accepted that she had no claim under articles 2, 3 and 8 of the European Convention. In addition, she has never invoked article 14 of the

European Convention at the national level. In that regard, the State party reiterates that the author did not expressly raise the issue of gender discrimination in her asylum application or the national legal proceedings.

2.7 In the light of the foregoing, the State party notes that, while the author did not address the exhaustion of domestic remedies in her initial communication, she has since submitted that her asylum claim was related to honour killing as a result of her marriage against her family's will and that there was no need to separately explain that honour crimes are a form of discrimination within the meaning of article 14 of the European Convention on Human Rights. In that respect, the State party notes that, as a matter of national law, the author could have submitted that her removal from the United Kingdom would constitute gender-based discrimination contrary to article 14 of the European Convention; however, she failed to do so. The State party also notes that, contrary to her submissions of 26 June 2014, the author did not, in her asylum claim, put a sex/gender discrimination case either explicitly or in substance.[1] According to the State party, she explicitly asserted as part of her asylum claim and the national legal proceedings that her husband had been threatened by her family and that he had been disowned by his own family, making him "as much a victim as she was". As such, her own asylum claim and evidence are completely inconsistent with the notion that she would suffer gender-based discrimination if returned to Pakistan. Furthermore, she expressly abandoned any reliance on the European Convention on Human Rights before the First-tier Tribunal and her appeal against the refusal decision of 20 August 2013 was solely on the basis of asylum law, not on that of human rights or the prohibition against discrimination. At no stage during the national proceedings did she appear to have advanced the argument that she had made to the Committee that "actual discrimination relates to [her status as a] bride, because ... she married [a] person of her choice and this act has brought shame to the family".

2.8 Furthermore, the author's ex post facto explanation, advanced for the first time in her comments of 26 June 2014 to the Committee, that there was "no need" to rely on article 14 of the European Convention on Human Rights is not credible. The reality, according to the State party, is that the author did not advance a claim under article 14 because there was no factual or evidential premise therefor, given that the author herself relied on the harm that she claimed would be suffered by both her and her husband as a result of their removal to Pakistan. In that connection, the State party notes that in her removal complaint the author continued to rely on the alleged harm suffered by both herself and her husband. Given those considerations, the State party reiterates that the decision of admissibility should be reviewed in that context because the author failed to exhaust national remedies.

2.9 As to the merits of the communication, the State party recalls that, according to the decision of admissibility, the communication is admissible insofar as it raises issues under articles 1, 2 (c), (d) and (e), 3, 5 and 16 of the Convention. In that regard, the State party preliminarily notes that the author does not appear to have relied on article 5 or 11 of the Convention in her submissions and, therefore, it is unclear what the author's case is in relation thereto.

[1] See *Azinas v. Cyprus*, application No. 56679/00, European Court of Human Rights, judgement of 28 April 2004, para. 4.9; and communication No. 8/2005, *Kayhan v. Turkey*, decision of inadmissibility adopted on 27 January 2006, paras. 7.6-7.7.

2.10 In any event, the State party submits that the author's reliance on article 2 (e) of the Convention is confined to the detention complaint and is therefore irrelevant at the current stage. It notes that the author's asylum application at the national level failed on the facts/evidence, given that both the Home Secretary and the First-tier Tribunal concluded that as a matter of fact/evidence, taking into account their concerns regarding the author's credibility, that the author had failed to show that she and her husband would face a reasonable degree of likelihood of persecution or a real risk of serious harm in Pakistan and to show that they could not seek internal protection in Pakistan or relocate. The State party maintains that the factual findings of the First-tier Tribunal were reasoned and were thereafter upheld during the author's appeal proceedings. In that regard, the State party notes that, although the Committee has certain fact-finding powers under its rules of procedure, there should be compelling reasons before it uses them. There are no such compelling reasons in the present case, given that the Tribunal's findings of fact provide a reliable factual basis because they were made by the judge of the Tribunal after he had read the relevant documents and seen and heard evidence from the author, her husband and their two witnesses. According to the State party, the judge had a proper opportunity to consider all the evidence and, in particular, to consider the credibility of the author and her witnesses. The State party therefore invites the Committee to accept the Tribunal's findings of fact and credibility.

2.11 The State party further submits that there is no proper basis on which the fairness of the British legal process can be impugned in the present case. Although the author challenges aspects of the legal process, her submissions are unmeritorious because she is primarily critical of the factual findings of the First-tier Tribunal, even though those findings were reasoned and later upheld on appeal. In her comments of 26 June 2014, she alleges that the State party's legal process discriminated against her on the basis of her gender, but her allegations are vague and unsubstantiated. At no time did she raise any such complaints before the State party's courts, which undermines the credibility of the allegations. She could have raised such complaints under the Human Rights Act and under articles 6 and 14 of the European Convention on Human Rights; her failure to do so means that this aspect of her removal complaint is inadmissible for failure to exhaust domestic remedies.

2.12 In that context, where within the fair and transparent legal process it was concluded, for factual reasons, that the author and her husband were not persons at risk, the State party maintains that it had no duty to protect the author or her husband pursuant to the Convention, the "Geneva Convention" or the European Convention on Human Rights. Accordingly, the State party has violated no provisions of the Convention. In particular, in respect of the author's claim under articles 1 and 2 (d) of the Convention that she was deported even though the authorities were aware that she would be subjected to gender-based violence in the form of honour killing because she had married against her family's will, the State party reiterates that the author could have claimed that her removal from the United Kingdom was discriminatory and contrary to article 14 of the European Convention on Human Rights; however, she failed to do so and her removal complaint is therefore inadmissible. In any event, according to the State party, her claim is based on the factual assertions that her family members had threatened her because of her marriage to her husband and she would be killed and tortured by them if she returned to Pakistan. The State party submits that the factual assertions were not

accepted during the national proceedings; in particular, they were not accepted by the judge of the First-tier Tribunal who had heard oral evidence from the author, her husband and their two witnesses, and there is no reason for the Committee to consider the author's factual assertions to be more credible now than they were then.

2.13 In the light of the foregoing, the State party submits that the author's criticism of the factual findings of the First-tier Tribunal is limited to disagreeing with them and that she has advanced no substantive or reasoned criticism of those findings, nor challenged the propriety or lawfulness of the fact that, under the State party's law, she bore the burden of proof to establish the factual and evidential aspects of her claim. There is, therefore, no adequate or appropriate basis on which the Tribunal's findings can be overturned. In those circumstances, the Committee is invited to rely on the Tribunal's findings of fact and credibility. In addition, the author's reference to the "evidence" regarding her cousin (see para. 2.3 above) should be disregarded because she did not put the information before the Home Secretary or the Tribunal. She has not explained that striking omission from the national proceedings, which further undermines her credibility. Lastly, she has failed to prove that her cousin and her cousin's husband were murdered by her family and to show that the murders were a form of gender-based discrimination, given that she claims that her cousin and her cousin's husband were both killed.

2.14 Regarding the author's claim that she applied for an interim injunction but the State party's authorities requested a court not to grant it, the State party submits that it neither accepts that the author applied for an injunction nor that she was denied one by a court. It explains that on 1 October 2013 the Treasury Solicitor sent a legitimate letter to the court that simply anticipated that an injunction application might be made and explained, by reference to the facts, that, were the application made, it would be unmeritorious. The State party therefore maintains that it has not violated article 2 (c) of the Convention.

2.15 The State party notes that the author alleges that the judge of the First-tier Tribunal gave no weight to her documents and did not read all the documents properly. She gives no reasons to explain or support the allegation, however, simply referring to the documents attached to her submission of 26 June 2014, of which the first page is an excerpt from one of her interviews and the second is her appeal in the context of the Tribunal's decision of 3 September 2013. Neither document explains or supports her allegation because both simply repeat the claims. Accordingly, her allegation is unfounded because the Tribunal's determination is a cogent and carefully reasoned decision and was later upheld as such on appeal.

2.16 Furthermore, the State party takes note of the author's claim that the judge made many mistakes, did not consider the witness statements of the two witnesses and ordered the author's husband to be held separately from the author during an oral hearing, which the author claimed showed bad faith, a gross disregard for her rights and an incompetent tribunal. The State party assumes that the reference to "mistakes" pertains to the fact the judge of the First-tier Tribunal did not accept the author's evidence. The State party maintains that there are no other "mistakes" identified by the author other than the factual findings that were not favourable to her. In the light of its arguments in paragraphs 2.12 and 2.13 above, the State party invites the Committee to reject the author's attempts to impugn the Tribunal's factual findings.

2.17 The State party also notes that the author provides no explanation for her assertion that the judge "did not consider" the statements of her witnesses. As noted above, the decision of the First-tier Tribunal of 3 September 2013 provides a careful description of the evidence before the judge and his views on it. The judge was in a position to conclude that the evidence produced by one of the author's witnesses was "entirely self-serving". Furthermore, there is no evidence supporting the author's allegation that the judge said that she should be held separately from her husband, nor is it a credible allegation. The State party notes that the author was represented by counsel before the Tribunal and, had the judge made any such statement, she would surely have been advised by her counsel to include it in the grounds for appeal. There is no reference to any such statement in either her appeal to the First-tier Tribunal or to the Upper Tribunal, however. The State party therefore invites the Committee to disregard that unsubstantiated allegation. In addition, even if the judge had made such a statement, the author would have been able to challenge it under national law pursuant to the Human Rights Act and article 6 of the European Convention on Human Rights, but she did not do so. She has therefore failed to exhaust domestic remedies and that part of the removal complaint should be regarded as inadmissible.

2.18 Regarding the claim under article 3 of the Convention, the State party notes that, in her comments of 26 June 2014, the author asserted that the United Kingdom had allegedly violated article 3, given that its action in deporting her to Pakistan had exposed her to the risk of torture and inhuman treatment by her family, and there had been a denial by the United Kingdom of her right to life by exposing her to the risk of gender-based violence, known as honour killing, as result of her deportation. The State party notes that the assertion duplicates the submissions made by the author in relation to her claim under article 2 (d) and therefore invites the Committee to reject the author's reliance on article 3 in the light of the State party's arguments in the context of her claim under article 2 (d).

2.19 On the claim under article 16 of the Convention, the State party refers to the author's assertion that the State party was violating that article by asking why the author had married her husband notwithstanding the existence of a threat. It notes that the author makes the assertion in response to the State party's argument contained in its observations on admissibility, wherein the State party noted that the Home Secretary had rejected the author's allegation that she had been threatened as implausible given that it had not stopped her from marrying. In that connection, the State party notes the relevant part of the refusal decision, which states that, "despite these threats and in the full knowledge of what [the author] believed would happen to [her] upon return to Pakistan, [the author] married [her] husband and then claimed asylum". The State party submits that, by that statement, the Home Secretary was piecing together the facts in order to assess the truth of the author's claims, i.e. by considering whether she would really have married her husband if, as she believed, her life would be in danger if she returned to Pakistan. The Home Secretary was not asserting, contrary to article 16 (a) of the Convention, that the author did not have the same right to enter into marriage as a man. The State party submits that the statement at issue has no relation to article 16 (a) and, therefore, there was no violation of the provision.

2.20 Regarding the alleged violation of articles 5 and 11 of the Convention, the State party submits that it is not in a position to understand how the provisions are engaged by the facts. It submits that article 5 (b), which concerns family education,

and article 11, which concerns rights in relation to employment and the right to work, have no application to the facts. The State party is also not in a position to understand how article 5 (a) could be engaged given that it requires the modification of social and cultural patterns of conduct of men and women, but the author makes no allegations about any objectionable British social and cultural patterns.

2.21 Furthermore, the State party takes "honour-based" violence seriously and views "honour" crimes as an abuse of human rights not condoned by religion, ethnicity or culture. It addresses such violence through a domestic violence inter-ministerial group (see CEDAW/C/UK/6, para. 614). The State party notes, in particular, the fact that, through a forced marriage unit, its authorities provide funding for support and awareness-raising activities overseas, including in Pakistan. Some of the activities were set out in the State party's seventh periodic report to the Committee (CEDAW/C/GBR/7, para. 245-247), and include: (a) the provision of funding to two non-governmental organizations in Pakistan: (i) victims of violence in Islamabad who have been rescued are accommodated in a women's refuge run by the organization Struggle for Change; (ii) other victims, located in Lahore, are supported by the Centre for Legal Aid, Assistance and Settlement, which collects victims and takes them to the British High Commission; (b) awareness-raising signage in airports and leaflets on aeroplanes flying to Pakistan, to signpost potential victims to sources of help; and (c) workshops in Azad Kashmir and Punjab, for local government marriage registrars and union council secretaries, to train the participants to identify, assess and manage issues relating to gender and forced marriage in their communities and to build capacity for this knowledge to be disseminated in the future. In addition, in 2014, the High Commission in Islamabad oversaw forced marriage community projects to promote awareness in Attock, Jhelum and Rawalpindi, while the High Commission in Dhaka ran a poster competition in Sylhet.

2.22 The State party maintains that the author's removal complaint should be rejected as manifestly unfounded and invites the Committee to conclude that the State party has not violated the Convention.

Author's comments on the State party's observations on the merits

3.1 On 21 September 2015, concerning the State party's argument about non-exhaustion of national remedies and article 14 of the European Convention on Human Rights, the author submits that the Office of the United Nations High Commissioner for Refugees (UNHCR) issued guidelines dated 7 May 2002 about gender-related persecution intended to provide legal interpretative guidance for, among others, Governments and decision makers. The author submits that her responsibility as a claimant was to establish her well-founded fear of being persecuted for the reason of membership of a particular social group. She claims that she explained to the national authorities that she had married a person of her own choice against her family's will and that, because her family had disowned her, upon her return to Pakistan she would be either tortured or killed in the name of honour or forced to divorce and to marry another person.

3.2 She notes that, according to the 1951 Convention relating to the Status of Refugees, an asylum seeker has to provide relevant factual information or substantiate a claim with regard to discrimination based on sex and/or gender-related persecution, while the decision maker should ask further relevant questions and apply the information to the legal framework. The author reiterates that at the

national level she stated that she would be subjected to honour killing and/or forced marriage, that she had married against her family's wishes and that her family members had threatened to kill her or to force her to marry a person of their choice, all of which should suffice for the State party to assess her claim relating to forced marriage and honour killing. She further maintains that in accordance with the UNHCR guidelines decision makers are responsible for correctly interpreting gender-related claims under the Convention and a claimant is not required to identify accurately the reason why he or she has a well-founded fear of being persecuted. The author submits that the national authorities failed to observe the guidelines, even though they had every opportunity to follow them to determine her refugee status based on a gender-related claim.

3.3 The author further submits that the State party erred by not accepting that honour killing directed against her on the basis of her gender is discrimination. She explains that honour crimes are acts of violence, usually murder, committed by male family members against women held to have brought dishonour and shame upon the family. She adds that she presented to the national authorities several publications from the mass media relating to honour killings, in addition to a report from a non-governmental organization documenting that such crimes are common in Pakistan. The author notes that she explained to the judge that Pakistan was a male-dominated society, with women subjected to the decisions of men. She adds that, on 20 August 2013, she made further submissions in support of her asylum claim, stating that she had been threatened by non-State actors and the State was unable to protect her. The author further notes that sharia has been in force in Pakistan since 2003 and quotes article 548 of the Penal Code of the Syrian Arab Republic, which contains an exemption from penalty if a man kills or injures his wife or another woman after finding out that she has brought shame upon him and his family.

3.4 The author submits that the State party clearly failed to fulfil its obligations under the Convention because it was obliged to recognize gender-based persecution, such as forced marriage and honour killing, as grounds for her asylum claim and to consider gender-based persecution as discrimination against her. The State party was obliged to interpret the 1951 Convention relating to the Status of Refugees in accordance with its legally binding obligations under the Convention on the Elimination of All Forms of Discrimination against Women. In that connection, the author reiterates that her asylum claim was related to forced marriage and honour killing given that she married against her family's will and that that was sufficient to raise the issue of sex-based discrimination, given that forced marriage and honour killings are forms of gender-based violence that constitute discrimination under article 1 of the Convention, read together with the Committee's general recommendation No. 19 (1992) on violence against women. She notes that, according to the general recommendation, violence against women is placed within the ambit of discrimination against women because gender-based violence is a form of discrimination against women and includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. In addition, according to the general recommendation, gender-based violence is a form of discrimination that could impair or nullify the enjoyment by women of their human rights and fundamental freedoms, such as the right to life, the right to security of the person or the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Therefore, according to the author, there was no need to

separately explain or indicate that honour crimes are a form of discrimination falling under article 14 of the European Convention on Human Rights.

3.5 The author maintains that the State party's asylum procedure is discriminatory, given that the 1951 Convention relating to the Status of Refugees is not interpreted in a way that reflects women's experiences. According to her, the State party's authorities, including the judiciary, failed to apply a gender-sensitive approach in her case. She adds that she did not have to use specific words such as "discrimination" while claiming asylum and that she exhausted domestic remedies in respect of her discrimination claim. She adds that submitting a complaint under article 14 would be unlikely to bring effective relief.[2]

3.6 On the merits, the author reiterates that her responsibility was to establish her well-founded fear of being persecuted for being a member of a particular social group in Pakistan and that she is unable to obtain State protection or to relocate. She claims to have discharged that responsibility through her claims of honour killing or forced marriage. She recalls that she has been receiving death threats since May 2013 from her father, uncle, brothers-in-law and cousins. She reiterates that she informed the State party's authorities of her family status and caste situation and that her father was a powerful and rich man with political connections, and that she presented several publications relating to honour killings, as well as a report from a non-governmental organization documenting that such crimes are common in Pakistan. She maintains that, on 20 August 2013, her lawyer informed the authorities, in support of her asylum claim, that a relative who had married against the family's wishes had been killed by family members. The author notes that her cousin has connections with "airlines" and, with the help of the chief executive officer of an air company, was able to locate that relative. She adds that during her interview on 19 September 2013 she mentioned that one Z.A. had once witnessed her being threatened by her family on the telephone. The information was also presented to the judge, but was dismissed as evidence because he concluded that it was "self-serving".

3.7 The author adds that she explained to the State party's authorities that she would not receive protection in Pakistan, given that a cousin worked for the police, and that her family had resources to locate her and she would therefore be unable to relocate because she would not be safe anywhere. She also notes that a first information report was issued against her husband and she would risk being left on her own if he were arrested. Furthermore, she claims that she has twice been attacked by her family. The first attack left her with minor injuries, whereas she and her husband sustained serious injuries as a result of the second attack, in September 2014, with the author left unable to walk without assistance for eight weeks.

3.8 The author further claims that the judge of the First-tier Tribunal and the appeal judges adopted biased and discriminatory decisions. In particular, the judge of the First-tier Tribunal made mistakes regarding the time when the author had informed her family concerning her marriage to her husband, the time when her brother-in-law had informed her father about the marriage and about who had inherited her mother's estate. She further reiterates that the same judge disregarded her witness statements, considering them to be self-serving. She indicates that she submitted to the judge, among other things, that honour killings in Pakistan were

[2] The author refers to communication No. 32/2011, *Jallow v. Bulgaria*, views adopted on 23 July 2012.

common, that she would be killed upon her return in the name of honour and that she would be unable to receive protection from the authorities in Pakistan or to relocate.

3.9 The author submits that, under the 1951 Convention relating to the Status of Refugees, the State party's authorities were obliged to collect country information pertinent to her claim, but failed to do so. She also claims that her case was determined from the perspective of "male experience". She claims that the Committee has invited the State party to ensure the full implementation of "asylum gender guidelines", but no such guidelines have been introduced in the asylum system. The author submits that, pursuant to article 2 (d) of the Convention, the State party was obliged to protect her and not return her to a country where her life would be at risk.

3.10 The author maintains that her claims are substantiated. In relation to her claim under article 2 (d), read together with article 1, of the Convention, she reiterates that the State party's authorities failed to take into account that forced marriage and honour killings are serious forms of gender-based persecution. She reiterates her submissions.

3.11 In the context of her claim under article 3, read together with article 1, of the Convention, the author submits that, by deporting her to Pakistan, the State party exposed her to a risk of torture and inhuman and degrading treatment by her family and to a risk of gender-based violence and death, as demonstrated by the two attacks already perpetrated against her. She concludes that the State party has violated its obligations under article 3, read together with article 1, of the Convention and the Committee's general recommendation No. 19.

3.12 On her claim under article 2 (c), read together with article 1, of the Convention, the author submits that the State party has failed to put into place a system that ensures effective, competent and independent judicial actions for the protection of women's rights in the case of gender-based violence. She further maintains that she applied for an interim injunction on 30 September and 1 October 2013. She reiterates the mistakes permitted by the court when ruling on her asylum claim and notes the State party's failure to sufficiently familiarize its law enforcement and judicial personnel with gender-based violence and to collect data and maintain statistics on such violence. Consequently, she claims that article 2 (c), read together with article 1, of the Convention and the Committee's general recommendation No. 19 have been violated in her case.

3.13 As to her claim under articles 16 (a) and (b) of the Convention, the author reiterates that she informed the State party's authorities that, given that she had married against her family's will, she would be tortured or killed in the name of honour upon return to Pakistan. She explained that her intention was not to go to the United Kingdom to seek asylum; however, because she had married against her family's will, there were threats to her life and she could not therefore return to Pakistan. By returning her to Pakistan, the State party violated her rights under articles 16 (a) and (b).

3.14 Lastly, the author maintains that the State party was obliged to respect the Committee's request for interim measures under article 5 (1) of the Optional Protocol.

3.15 On 18 November 2015, the author added that she had been attacked by her family on 15 November, attaching as evidence three photographs of her injuries.

State party's further observations

4. On 2 February 2016, the State party reiterated its arguments that the communication was inadmissible owing to non-exhaustion of domestic remedies. As to the merits of the case, the State party reiterates that the author and her husband were refused asylum because the author failed to show as a matter of fact and evidence that she was being threatened by her family; that she would be unable to have recourse to internal protection in Pakistan; and that she (and her husband) would be unable to relocate in Pakistan. The State party is well aware of "honour-based" violence and takes it seriously, as amply illustrated by its involvement in the various matters described in its observations of 23 July 2015. Lastly, the State party takes note of the author's submission in her comments dated 21 September 2015 that, before that date, her family had attacked her and/or her husband twice and that after the first attack she had suffered minor injuries, while after the second attack she had been left unable to walk without assistance for eight weeks and her husband had sustained serious head injuries. The State party also takes note of the author's submission of 18 November 2015 wherein the author maintains that she sustained injuries during an attack at the hands of her family on 15 November. In that connection, the State party submits that no details have been provided concerning the first attack. Furthermore, the State party observes that, in her submission to the Committee of 17 September 2014 about the attack of 16 September 2014, the author stated that she had also been attacked. In that regard, the State party observes that the author does not attempt to reconcile that description, which gives the impression that her injuries were not serious, with what she told the Committee in her submissions of 21 September 2015 — that she was unable to walk for eight weeks. The State party also notes that no medical evidence relating to the alleged injuries has been submitted.

Issues and proceedings before the Committee concerning the merits

Preliminary considerations

5.1 The Committee notes that, in its observations of 23 July 2015 on the merits of the present communication, the State party also challenged the admissibility of the communication on the ground that the author had not raised her discrimination claims at the national level and therefore had failed to exhaust available domestic remedies as required by article 4 (1) of the Optional Protocol. In that regard, the Committee recalls that, in paragraph 10.2 of its decision of admissibility of 2 March 2015, it had already concluded that it was not precluded by article 4 (1) from examining the part of the author's communication pertaining to her claim that she feared gender-based violence in Pakistan.

5.2 Furthermore, the State party also submitted that the author did not appear to raise any claims under articles 5 and 11 of the Convention. In that connection, the Committee notes, with regard to article 5, that there may be situations in which an author does not invoke a specific article of the Convention before the Committee, but the facts as presented to it by that author do disclose claims raising issues under a

particular provision of the Convention.[3] Lastly, the Committee notes that it has not declared the author's claim under article 11 admissible.[4]

Consideration of the merits

6.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided in article 7 (1) of the Optional Protocol.

6.2 The Committee notes that the author claimed that her removal to Pakistan would constitute a violation of articles 1, 2 (c), (d) and (e), 3, 5 and 16 of the Convention, read in conjunction with the Committee's general recommendation No. 19. Her claim was grounded on the alleged risk of gender-based violence that she would face were she returned to Pakistan, given that her family members would persecute or even kill her because she had married against their will, and on the fact that the State party's asylum determination procedure in her case was discriminatory because the authorities did not give proper consideration to the witness statements and documents in support of her asylum claim.

6.3 The Committee also takes note of the State party's observations that the argumentation regarding her and her husband's risk upon return to Pakistan and the evidence presented by the author within the asylum proceedings were controversial and lacked both credibility and substantiation; thus the decision of the Home Secretary and the determination by the First-tier Tribunal were based on the author's failure to demonstrate that she had a well-founded fear of persecution or that she was at risk of serious harm in Pakistan. The State party also notes that the author was denied permission to appeal before the Upper Tribunal because the grounds of her appeal simply raised a factual dispute that the judge was entitled to resolve against the appellant and that the grounds of appeal were without substance. In addition, the State party notes that the author has never raised her argument of gender-based discrimination before the national authorities. Thus, the State party maintains that there has been no violation of the author's rights under the Convention because the author's asylum application at the national level failed on the facts/evidence and her story lacked credibility.

6.4 The Committee recalls its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, in which it observed that States parties had an obligation to ensure that no woman would be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence. It also recalls that article 2 (c) of the Convention requires that asylum procedures allow women's claims to asylum to be presented and assessed on the basis of equality in a fair, impartial and timely manner. A gender-sensitive approach should be applied at every stage of the asylum process, including the risk assessment regarding gender-based violence.[5] The Committee further recalls that, under international human rights law, the principle

[3] See, for example, communication No. 45/2012, *Belousova v. Kazakhstan*, views adopted on 13 July 2015, para. 3.4.

[4] See communication No. 62/2013, *N.Q. v. United Kingdom of Great Britain and Northern Ireland*, decision of admissibility adopted on 2 March 2015, para. 11.

[5] General recommendation No. 32, paras. 23 and 25.

of non-refoulement imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. The principle of non-refoulement also constitutes an essential component of asylum and international refugee protection.[6] The essence of the principle is that a State may not oblige a person to return to a territory in which he or she may be exposed to persecution, including gender-related forms and grounds of persecution. Gender-related forms of persecution are forms of persecution that are directed against a woman because she is a woman or that affect women disproportionately.[7]

6.5 The Committee recalls that, under article 2 (d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation. The Committee also stresses that, according to its established jurisprudence, article 2 (d) encompasses the obligation of States parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party.[8] The Committee recalls that article 1 of the Convention defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The Committee also recalls its general recommendation No. 19, in which it clearly placed violence against women within the ambit of discrimination against women by stating that gender-based violence is a form of discrimination against women and includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.[9] The Committee has established, however, that what amounts to serious forms of gender-based violence triggering the protection afforded under article 2 (d) depends on the circumstances of each case and is determined by the Committee on a case-by-case basis at the merits stage.[10]

6.6 In the light of the foregoing, the Committee notes that, in substance, the author's claims are aimed at challenging the manner in which the State party's authorities, in particular the First-tier Tribunal, assessed the circumstances of her case, applied the provisions of the national law and reached conclusions. The Committee emphasizes that it does not replace the national authorities in the assessment of the facts.[11] The Committee considers that it is generally for the courts

[6] See article 33 (prohibition of expulsion or return ("refoulement")) of the 1951 Convention relating to the Status of Refugees.

[7] See, for example, communication No. 51/2013, *Y.W. v. Denmark*, decision of inadmissibility adopted on 2 March 2015, para. 8.6.

[8] See, for example, communication No. 33/2011, *M.N.N. v. Denmark*, decision of inadmissibility adopted on 15 July 2013, paras 8.5-8.10; communication No. 35/2011, *M.E.N. v. Denmark*, decision of inadmissibility adopted on 26 July 2013, paras. 8.4-8.9; communication No. 39/2012, *S.O. v. Canada*, decision of inadmissibility adopted on 27 October 2014, para. 9.5; and *Y.W. v. Denmark* (note 7 above), para 8.7.

[9] See, for example, *Y.W. v. Denmark* (note 7 above), para. 8.5.

[10] See ibid., para 8.7.

[11] See, for example, communication No. 34/2011, *R.P.B. v. the Philippines*, views adopted on 21 February 2014, para. 7.5.

of the States parties to the Convention to evaluate the facts and evidence or the application of the national law in a particular case, unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. The Committee notes that nothing in the material before it suggests elements likely to demonstrate that the examination by the authorities, including by the courts, of the author's claim concerning her fears and risks upon return to Pakistan suffered from any such defects.[12] In that regard, the Committee notes the author's claim that the State party's asylum procedure lacked gender sensitivity in her case, but observes that her argumentation in that regard is based on her criticism that the national authorities had disregarded the relevance of her statements, particular evidence and her witness statements in support of her claim.

6.7 Furthermore, taking into account the information provided by the parties, the Committee is of the view that there are inconsistencies in the author's story undermining the credibility of her claim that she would be persecuted and even killed if removed to Pakistan. In particular, the Committee notes the State party's observations to the effect that the author's initial communication on 24 September 2013 concerned solely the decision of the State party's authorities to remove her and her husband and that only in her comments of 26 June 2014 did the author first claim that her cousin, A.J., had married against her family's will and been killed, along with her husband, as a result. The Committee observes that the author has given no objective explanation as to why she did not provide such important details at the national level before the Home Secretary and the First-tier Tribunal, but advanced them only before the Committee and almost a year after submitting her initial communication.

6.8 Furthermore, the author claims that the State party's authorities unjustifiably disregarded two witness statements during her asylum proceedings. The Committee observes, in relation to the e-mail from the witness Z. as evidence that he had overheard the author and her husband being threatened by her family over the telephone, was disregarded by the Home Secretary as self-serving, given that the e-mail address of the person was not included and there was no date indicating when the e-mail was sent or received. The format of the e-mail was of a Word document, rather than an e-mail printed from an e-mail account. The State party also noted that, according to the e-mail, the author's husband was also receiving threatening calls, of which no mention was made in either her or her husband's asylum interviews. Furthermore, in relation to the statement by Z. regarding an e-mail excerpt containing information that the author's husband had been disowned by his family, the Committee observes that, according to the decision of the First-tier Tribunal of 3 September 2013, there were discrepancies in his statement because the author's husband maintained that the e-mail excerpt had been sent to him by Z., while Z. said that the article at issue had been mentioned to him by the author's husband and that it was the husband who had managed to obtain a copy of it. Moreover, the judge noted that during the asylum interview neither the author nor her husband had mentioned that the husband had been disowned by his family. In addition, Z. stated that he was unaware of the author's husband ever having received any threatening calls.

[12] See, for example, communication No. 30/2011, *M.S. v. the Philippines*, decision of inadmissibility adopted on 16 July 2014, paras. 6.3-6.4.

6.9 Furthermore, with regard to the author's claim that a first information report had been issued against her husband and that if he were arrested she would risk being left alone, the Committee observes that the author failed to provide any further information or details in that respect, either to the State party's authorities or to the Committee. In addition, in her comments on the merits, the author claimed that she had been attacked by her family on three occasions since her return to Pakistan: after the first attack she had sustained minor injuries; then in September 2014, when she had been injured and left unable to walk unaided for eight weeks; and third, in November 2015, when she had allegedly suffered head injuries. The Committee notes that, in her comments of 17 September 2014, the author provided no information on the injuries sustained in the attack and submitted photos disclosing only her husband's injuries. Moreover, the Committee notes that the author failed to provide further details and objective evidence concerning the attacks, such as whether the police were notified or whether the author and/or her husband sought medical assistance and whether any medical certificate or record was issued. The Committee notes that the author has lodged no complaints with the Pakistani authorities about the alleged incidents, nor explained why she has not sought to bring the incidents to the attention of the authorities.

6.10 In the light of the foregoing, and in the absence of any other pertinent information on file, while not underestimating the concerns that may legitimately be expressed with regard to the general human rights situation in Pakistan concerning women's rights, the Committee considers that nothing on file for the present case permits it to conclude that the State party's authorities did not give sufficient consideration to the author's asylum claims. The authorities addressed all the arguments that she presented during the asylum proceedings and assessed her allegations concerning threats made by her family members because she had married against their will, the evidence presented by her at the national level, including the statements of her witnesses, and her claims that she might be persecuted or even murdered upon her return. After addressing all those components, however, the State party's authorities found that her story lacked credibility owing to inconsistencies or lack of substantiation. Therefore, and in the light of all the information on file, the Committee cannot establish that the authorities of the State party, which considered her asylum case, conducted the examination of her asylum claim in such a manner that constituted a breach of the Convention.

7. Acting under article 7 (3) of the Optional Protocol, the Committee concludes that the author's asylum proceedings and her subsequent removal to Pakistan by the State party did not constitute a breach of articles 1, 2 (c), (d) and (e), 3, 5 and 16 of the Convention.